

OFFICE OF THE ATTORNEY GENERAL



81-00060

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Honorable Seth Hammett
Member, House of Representatives
District No. 75
P. O. Box 1418
Andalusia, Alabama 36420

Counties - Highways,
Roads and Bridges -
State Highway Department

Old state road remains
part of the state highway
system until a county of
its own choice freely
accepts responsibility
for the road.

Dear Representative Hammett:

Reference is made to your request for an opinion
as to the following matter:

"I want to request an opinion
from your office concerning
who has the responsibility
of the upkeep and maintenance
of what is referred to as

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'old Alabama Highway 55' in
Covington County. The question
is being addressed to you
because the Alabama Highway
Department contends it is the
responsibility of the Covington
County Commission and the
Covington County Commission
contends it is the responsibility
of the Alabama Highway Department."

The following facts are found in the information you enclosed in your opinion request: The State built a new road in Covington County to replace the old state route 55 which is the road in question. The State Highway Department then proposed to turn the old state highway over to the county for maintenance and upkeep. The county accepted this road into the county road system by resolution upon the conditions that certain repair work would be done by the Highway Department before it turned the road over to the county. The Highway Department says that they fulfilled their obligation. The County Commission contends that the Highway Department has not fulfilled the conditions set out in the resolution and therefore, Old State Route 55 remains the responsibility of the Highway Department.

The question of whether the Highway Department has sufficiently met the conditions set down by the County before the County would take over responsibility for Old Highway No. 55 is a factual dispute and cannot be resolved by this office.

In an opinion of the Attorney General found at Quarterly Reports of the Attorney General, Volume 2, page 192, the question was raised as to whether the State Highway Commission could drop certain roads built by the State from the State Highway System so that the State would no longer maintain them. In that opinion it

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was concluded that the State could abandon roads built by the State from the State Highway System but it could not force the counties in which these roads were located to take over the roads. It was said in that opinion that when the State builds roads, there was an implied contract that the roads would be kept in repair by the State Highway Department. A road constructed by the State remains a part of the State Highway System unless the State abandons the road or the county of its own choice accepts the road into the county road system. However, there is no authority for the State Highway Department to force a county to take over abandoned roads and maintain them. Again, it is to be maintained by the State Highway Department or it may be abandoned by them.

If our office can be of further assistance, please do not hesitate to call on us.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

By -


LYNDA F. KNIGHT
Assistant Attorney General

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